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**IN THE
COURT OF APPEALS OF INDIANA**

STATE OF INDIANA,)	
)	
Appellant-Plaintiff,)	
)	
vs.)	No. 02A03-0606-CR-238
)	
MARK A. LAUTZENHEISER,)	
)	
Appellee-Defendant.)	

APPEAL FROM THE ALLEN CIRCUIT COURT
The Honorable Thomas J. Felts, Judge
Cause No. 02C01-0508-FD-349

October 26, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

The State appeals from the trial court's grant of Mark Lautzenheiser's motion to suppress evidence. The State presents a single issue for our review, namely, whether reasonable suspicion existed to permit a police officer to stop Lautzenheiser's vehicle prior to his arrest.

We affirm.

FACTS AND PROCEDURAL HISTORY

At approximately midnight on August 4, 2005, New Haven Police Department Officer Gregory Anderson was in his patrol car and stopped southbound on Meyer Road at a red stoplight waiting to turn left onto State Road 930. At that same time and location, Lautzenheiser was in his car stopped facing northbound on Meyer Road waiting to turn right onto State Road 930. When the light turned green, Lautzenheiser did not move his car, but sat still until the light turned yellow. Just before the light turned red, he made his turn onto State Road 930. Officer Anderson sat waiting for Lautzenheiser, who had the right-of-way, to make his turn before Officer Anderson made his turn onto State Road 930.

Officer Anderson began to follow Lautzenheiser and observed that he was traveling between twenty-five and thirty miles-per-hour despite the forty-five mile-per-hour speed limit posted on that four-lane highway. Other drivers drove by in the passing lane at speeds of fifty to sixty miles-per-hour. Officer Anderson continued to follow Lautzenheiser and ultimately initiated a traffic stop "to make sure he wasn't having vehicle problems" and "to make sure [he] wasn't an intoxicated driver." Transcript at 13.

Officer Anderson first activated his emergency lights, but not the siren. Then, when Lautzenheiser did not stop, Officer Anderson activated his siren and manually shined a spotlight towards his car. Lautzenheiser did not increase or reduce his speed, but continued traveling. After traveling approximately one-eighth of a mile and turning off of State Road 930 onto New Haven Avenue, Lautzenheiser eventually stopped in the driveway of a house where a friend of his resides. Officer Anderson observed that Lautzenheiser's eyes were bloodshot, smelled a "moderate" odor of alcohol on his breath, and conducted a breathalyzer test, which showed a B.A.C. of .09%. Appellant's App. at 15.

The State charged Lautzenheiser with operating a vehicle while intoxicated, operating a vehicle with a blood alcohol content of .08% or greater, resisting law enforcement, and being an habitual substance offender. Lautzenheiser filed a motion to suppress alleging that the evidence was insufficient to show that Officer Anderson had reasonable suspicion to conduct the traffic stop. Following a hearing, the trial court granted that motion. This appeal ensued.

DISCUSSION AND DECISION

When the State appeals from the trial court's grant of a defendant's motion to suppress evidence, the State is appealing from a negative judgment. State v. Davis, 770 N.E.2d 338, 340 (Ind. Ct. App. 2002). Consequently, the State has the burden of demonstrating to us that the evidence is without conflict and that the evidence and all reasonable inferences therefrom lead to the conclusion opposite that reached by the trial court. Id. During our review, we consider only the evidence most favorable to the

judgment, and we neither reweigh the evidence nor judge the credibility of the witnesses. Id. However, we review the trial court's ultimate determination regarding reasonable suspicion de novo. Moultry v. State, 808 N.E.2d 168, 171 (Ind. Ct. App. 2004).

In his motion to suppress and during the suppression hearing, Lautzenheiser argued that his "detention, seizure and search" violated the Fourth Amendment to the United States Constitution and Article I, Section 11 of the Indiana Constitution. Appellant's App. at 21. In particular, Lautzenheiser asserted that Officer Anderson did not have reasonable suspicion to initiate the traffic stop. The trial court granted his motion to suppress.

On appeal, the State contends that Officer Anderson had "valid reasons" to stop Lautzenheiser and that the evidence, therefore, shows that reasonable suspicion existed to support the traffic stop. Brief of Appellant at 5. The Fourth Amendment prohibits unreasonable searches and seizures by the government, and its safeguards extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest. Moultry, 808 N.E.2d at 170. However, a police officer may briefly detain a person for investigatory purposes without a warrant or probable cause if, based upon specific and articulable facts together with rational inferences from those facts, the official intrusion is reasonably warranted and the officer has a reasonable suspicion that criminal activity "may be afoot." Id. at 170-71 (quoting Terry v. Ohio, 392 U.S. 1, 21-22 (1968)).

Reasonable suspicion is a "somewhat abstract" concept, not readily reduced to "a neat set of legal rules." Id. at 171 (quoting United States v. Arvizu, 534 U.S. 266, 274 (2002)). "When making a reasonable suspicion determination, reviewing courts

examine the ‘totality of the circumstances’ of the case to see whether the detaining officer had a ‘particularized and objective basis’ for suspecting legal wrongdoing.” Id. (quoting Arvizu, 534 U.S. at 273). The reasonable suspicion requirement is met where the facts known to the officer, together with the reasonable inferences arising from such facts, would cause an ordinarily prudent person to believe criminal activity has occurred or is about to occur. Id. It is well settled that reasonable suspicion must be comprised of more than an officer’s general “‘hunches’” or unparticularized suspicions. Webb v. State, 714 N.E.2d 787, 788 (Ind. Ct. App. 1999) (quoting Terry, 392 at 27).

Here, at the suppression hearing, Officer Anderson testified that at the time he decided to initiate the traffic stop, he “didn’t know” whether Lautzenheiser’s conduct was due to “problems with his vehicle” or intoxication. Transcript at 13. And he agreed that there was “some speculation” on his part in making the decision to pull him over. Id. While Officer Anderson testified that he “considered [Lautzenheiser] a reckless driver for going that slow on a busy highway[,]” he also testified that he did not issue a citation for reckless driving. Id. at 14. Finally, Officer Anderson agreed that there was no minimum speed requirement for State Road 930, but he testified that he was concerned that a vehicle approaching from the rear might not see their cars traveling at a slower rate of speed and cause a collision.

The evidence shows, and Officer Anderson testified, that Lautzenheiser’s conduct suggested either that he was having car trouble or that he was intoxicated. Because Officer Anderson could only speculate as to which was the underlying cause, and given the totality of the circumstances, we cannot say that the evidence supports a finding of

reasonable suspicion to initiate a traffic stop.¹ We conclude that the trial court did not err when it granted Lautzenheiser's motion to suppress the evidence.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.

¹ In its motion to correct error, the State also asserted that Officer Anderson "had the objective reason to conduct the stop when Defendant failed to yield to the officer's emergency lights and siren." Brief of Appellant at 5. But the State did not pursue that theory at the suppression hearing, and, therefore, there is no evidence to support that theory on appeal. See, e.g., Webb, 714 N.E.2d at 788 (rejecting argument where State "imputed to Officer Reddy a new theory for the stop despite Reddy's own testimony as to why he stopped Webb.").